IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 277 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUNESHBHAI J MANIAR

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioners

MR SK PATEL Learned APP for Respondent No. 1

MR JM BUDDHBHATTI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

1. The petitioners have preferred this petition under Section 482 of the Criminal Procedure Code, 1973 for quashing the complaint i.e. F.I.R. filed by the second respondent before the Mandvi Police Station in Kachchh District being C.R. No. 1 of 1999. It was filed on 1.1.1999 for offences punishable under Section 498 A read with Section 114 of the Indian Penal code against the present petitioners.

2. The petitioner no.1 is the husband of the second respondent. The petitioner nos. 2 and 3 are husband and wife and they are uncle and aunt of the first petitioner. The petitioner no.4 is the grandmother of the first petitioner. The learned advocate for the petitioners has produced death certificate of petitioner no.4 showing that she has died on 9.11.1999 and her name has been wrongly stated as Narendrabhai Maganlal Maniar, but her real name is Narmadaben Maganlal Maniar. The petitioner no.5 is also the relative of the first petitioner and is staying at Bombay.

3. After completing arguments, the learned advocate for the petitioners states that he would not press this petition so far as the petitioner nos. 1,2 and 3 are concerned. Therefore, the petition naturally stands dispossed of so far as the petitioner nos. 1,2 and 3 are concerned. So far as the petitioner no.4 is concerned, she is already died. Therefore, the petition naturally abates against the petitioner no.4. So far as the petitioner no.5 is concerned, it has been argued at length that he is a resident of Bombay and there is no question of causing any harassment to the second respondent at the hands of petitioner no.5. There is no allegation that the petitioner no.5 used to come to Mandvi very often and used to harass the second respondent. There is no other allegation on record to show that the petitioner no.5 used to instigate the petitioner nos. 1,2 and 3 in commission of the aforesaid offence. There is no allegation to show that the petitioner no.5 used to abate the commission of the said offence by the petitioner nos. 1,2 and 3. Therefore, considering the F.I.R. as a whole, I am of the view that the second respondent has not made allegations against petitioner no.5 and no case is made out against the petitioner no.5 showing that the aforesaid offence was committed by the petitioner no.5 or he has abated the commission of the said offence being committed by the petitioner nos. 1,2 and 3. In that view of the matter, Mr. Budhbhatti appearing on behalf of the contesting respondent also states that the learned advocate for the petitioner is right in arguing that the allegations

against the petitioner no.5 are not sufficient to enable the Investigating Agency to proceed against the petitioner no.5 in the said investigation.

4. In that view of the matter, petition is required to be allowed so far as petitioner no.5 is concerned. In this connection I have heard Mr. S.K.Patel,learned APP for State. In the aforesaid view of the matter, petition is ordered to be disposed against the petitioner nos 1,2 and 3. The petitioner nos. 1,2 and 3 are at liberty to submit appropriate application before the Court below as and when charge sheet is filed and at the stage when the charge may be framed against petitioner nos. 1,2 and 3. So far as the petitioner no.4 is concerned, proceedings will stand abated since petitioner no.4 has died.

5. So far as petitioner no.5 is concerned, petition is allowed and F.I.R. being C.R. No. 1 of 1999 pending in Mandvi Police Station in Kachchh is ordered to be quashed. Interim relief granted earlier staying the investigation in the matter stands vacated. Rule made absolute.

(D.P.Buch,J)

(vipul)